

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

GRACIE LANE,

Plaintiff,

v.

CIVIL ACTION NO. 5:04-cv-01242

PRIMA MARKETING LLC,

Defendant.

CIVIL CONTEMPT ORDER

Pending before the Court is Defendant's Motion to Show Cause for Contempt Against Dennie S. Morgan, Jr., Former Counsel for Plaintiff, and For Award of Damages [Docket 62], filed by Defendant's counsel, Jane E. Harkins, on August 16, 2007. By Standing Order entered on July 21, 2004, and filed in this case on November 19, 2004, this action was referred to United States Magistrate Judge R. Clarke VanDervort for submission of proposed findings of fact and a recommendation for disposition pursuant to 28 U.S.C. § 636(b)(1)(B) (PF&R). Magistrate Judge VanDervort filed a PF&R on February 29, 2008 [Docket 63]. In that filing, the magistrate judge recommended that this Court grant Defendant's Motion to Show Cause for Contempt Against Dennie S. Morgan, Jr. [Docket 62], find Dennie S. Morgan, Jr. to be in contempt of the Court's Orders dated October 5, 2006, and April 30, 2007, and award Defendant its reasonable attorney's fees and costs in the amount of \$842.14.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to

which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and Mr. Morgan's right to appeal this Court's Order. *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge VanDervort's PF&R were due by March 17, 2008, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). To date, no objections have been filed.


Having reviewed the PF&R filed by Magistrate Judge VanDervort, the Court **ADOPTS** the findings of facts, conclusions of law, and recommendations contained therein. Accordingly, the Court hereby **GRANTS** Defendant's Motion to Show Cause for Contempt Against Dennie S. Morgan, Jr. [Docket 62], **FINDS** Dennie S. Morgan, Jr. to be in contempt of the Court's Orders dated October 5, 2006, and April 30, 2007, and **AWARDS** Defendant its reasonable attorney's fees and costs in the amount of \$842.14.

Mr. Morgan shall pay to counsel for Defendant all monies owed to her, in the amount of \$1,917.14, by **May 2, 2008**. Counsel for Defendant shall notify the Court by **May 2, 2008**, whether she received full payment. If payment is not made in full by that date, then the Court will consider other means of coercing Mr. Morgan to comply with this Civil Contempt Order, and the Orders dated October 5, 2006, and April 30, 2007. This includes, but is not limited to, the issuance of a bench warrant for Mr. Morgan's imprisonment until he complies with the Orders or a fine payable to the Court conditioned on his compliance with the Orders. *See Shillitani v. United States*, 384 U.S. 364, 368 (1986) (quoting *In re Nevitt*, 117 F. 448, 461 (8th Cir. 1902) (civil contemnors are imprisoned only until they comply with the orders of the court and "carry 'the keys of their prison in their own pockets'")); *Buffington v. Baltimore County*, 913 F.2d 113, 133 (4th Cir. 1990) (quoting

Hicks v. Feiock, 485 U.S. 624, 631-32 (1988) (“If the relief provided is a sentence of imprisonment, it is remedial if the defendant stands committed unless and until he performs the affirmative act required by the court's order, and is punitive if the sentence is limited to imprisonment for a definite period. If the relief provided is a fine, it is remedial when it is paid to the complainant, and punitive when it is paid to the court, though a fine that would be payable to the court is also remedial when the defendant can avoid paying the fine simply by performing the affirmative act required by the court's order.”).

The Court **DIRECTS** the Clerk to send a certified copy of this Civil Contempt Order to counsel of record, Magistrate Judge VanDervort, and Dennie S. Morgan, Jr., Post Office Box 7, Prosperity, West Virginia 25909.

ENTER: March 20, 2008



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE